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and DIGITAL POINT SOLUTIONS, INC.

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

EBAY, INC., Plaintiff, v. DIGITAL POINT SOLUTIONS, INC., et al., Defendants.	))))))))))	Case No. CV 08-04052 JF PVT **DEFENDANTS DIGITAL POINT SOLUTIONS, INC. AND SHAWN HOGAN'S OPPOSITION TO PLAINTIFF'S ADMINISTRATIVE MOTION FOR LEAVE TO EXCEED PAGE LIMIT FOR CONSOLIDATED OPPOSITION TO MOTIONS TO DISMISS AND/OR TRANSFER**

Defendants Digital Point Solutions, Inc. and Shawn Hogan (the DPS Defendants) respectfully request that the Court deny Plaintiff's motion for leave to file a consolidated opposition as to all defendants with respect to the pending motions to dismiss/transfer.[1] The DPS Defendants and Non-DPS Defendants constitute distinct groups and have made differing arguments in responding to the Second Amended Complaint (SAC). For clarity purposes, Plaintiff's opposition papers should be parsed out accordingly. Notably, Plaintiff filed separate opposition briefs as to each group of defendants in opposing the first round of motions to dismiss and Plaintiff would not suffer any prejudice in doing so

[1] The DPS Defendants did not intend to file a formal opposition to the motion because their reasons for opposing the request are set forth in Exhibit F to the Bunzel Declaration. However, Plaintiff's moving papers assert a number of additional claims that warrant further response.

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with respect to the present motions.

Further, because the DPS Defendants filed two distinct motions in responding to the SAC (the Motion to Dismiss and the Motion to Transfer, respectively), the DPS Defendants should not be constrained to file a consolidated reply brief in responding to Plaintiff's opposition papers.

In support of its motion, Plaintiff contends that the defendant groups coordinated to maximize their respective page limitations in responding to the SAC. Plaintiff contends:

> [B]ecause Defendants could rely on each other to cover all of the arguments they wished to advance, each group of Defendants could devote its page allocation to a subset of two, three or four of those arguments. In fact, the DPS Defendants' Motion to Dismiss used 22 pages to make only two of the five arguments. Moreover, the DPS Defendants took "two bites at the apple" by making the virtually identical argument in both their Motion to Dismiss and Motion to Transfer that the PSA's forum selection clause governs eBay's claims. (Motion to Exceed Page Limits, p. 4:18-23).

As a preliminary matter, there is no basis for Plaintiff's contention that the DPS Defendants relied on the other defendants "to cover all of the arguments they wished to advance," as the DPS Defendants' Motion to Dismiss does not join in the motions to dismiss filed by the Non-DPS Defendants.[2] Further, Plaintiff apparently takes issue with the DPS Defendants for using "22 pages to make only two of the five arguments." In doing so, Plaintiff appears to fault the DPS Defendants for attempting to fully brief the issues and explain the precise basis upon which dismissal is sought. Finally, Plaintiff contends that the DPS Defendants inappropriately took "two bites at the apple" with respect to arguments made in both the Motion to Dismiss and the Motion to Transfer. However, both motions are predicated on the applicability of the Publisher Service Agreement and both motions therefore appropriately explain the extent to which Plaintiff's User Agreement does not apply.

For the foregoing reasons, the DPS Defendants respectfully request that Plaintiff's motion to file a consolidated opposition brief as to all defendants be denied.

DATED: June 1, 2009

s/Ross M. Campbell
COAST LAW GROUP, LLP
Attorneys for the DPS Defendants

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[2] For instance, the DPS Defendants were not parties to the Commission Junction lawsuit or the subsequent release relied upon by the Non-DPS Defendants.